prejudged themselves of their glebe in the manner condescended on *sibi imputent.* *

To this it was ANSWERED,—That the said rectory will not be the third part of the town; that the haill feu-duties paid him will scarce make a dollar a year; that this ground was feued out long before the acts of Parliament appointing ministers to have glebes, and so cannot be reputed his glebe.

Yet the Lords construed it "instead of his glebe;" only they did him this favour, that the haill ground whereon these houses were built should be met, and if it wanted any thing to make it a complete glebe, conform to the quantity designed by the acts of Parliament, that then the same should be made up out of the Pathhead, because the defender could condescend upon no other parson's lands, save these of this rectory. Whereon they transacted the matter; and for the overplus, Watsone obliged himself to pay the parson, yearly, a sum of money during his incumbency there. See this decision, *Tit.* 9, *voce Gleibs,* in an 8vo. MS. of Pratiques.

Advocates' MS. No. 309, *folio* 126.

1672. *January* 24.

A PUPIL being pursued either as lawfully charged to enter heir or to renounce lands because of an order of redemption used, and compearing, and producing a renunciation subscribed by his tutor, taking burden for the pupil; the Lords sustained the same as a good and sufficient renunciation;

Albeit it was ALLEGED,—That it ought to be subscribed by the pupil's self, principally, and also by his tutors. Which was repelled, because *in ætate pupillari tutor gerit personam pupilli;* yea few can write any till they be ten or twelve. What if the child be a lass, who if of the minor sort, are seldom taught to write at all? It is granted, after tutory expires, the minor begins and acts principally himself in all deeds, and his curators do but consent; *at res aliter se habet in tutela ubi datur personæ non rebus; intellige principaliter. Vide infra, No.* 411, [*July,* 1673.]

Advocates' MS. No. 310, *folio* 127.

1672. *January* 25.

A SUSPENSION having been quarrelled as passed, contrary to the regulations, in so far as by the nineteenth article thereof, it is ordained, that no decreet *in foro* be suspended if in the time of Session, till the bill be presented to the haill Lords; if in the vacance time, then it must be passed by three together; and that this suspension, though a decreet *in foro,* was passed only by one, viz. my Lord Newbyth, and so was null.

* Yet see act 27, Parliament 1563, prohibiting glebes to be set in feu or in tacks.

This being taken to interlocutor, the Lords found the letters orderly proceeded, without respect to the suspension, unless the party would yet find sufficient caution, if he succumb in the suspension. It was a little rub on the Lord, but much more on the clerk to the Bills. It were much to be wished that a subsidiary action were tried against the clerks of that chamber, for receiving so many irresponsal cautioners as they do, especially where the insufficiency is intimated to them. Yet I confess, if that were brought in practice it might make that place very dangerous, yea a snare, and might draw more burden on Sir William Bruce than he is worth, since it is impossible for him to know the condition and solvency of all the lieges in Scotland; and it is enough they have a designation by land, and, in vulgar estimate, are reputed worth the sum charged for at that time when they are received. *Vide* more of this *alibi; item,* No. 489, [Historical Volume,] *July* 1676, *Earl of Argyle and Maccleans.*

Advocates' MS. No. 311, *folio* 127.

1672. *February* 1. SIR JAMES RAMSAY of Whythill *against* MAXWELL of Garnsalloch.

IN the action [mentioned in page 612,] between Sir James Ramsay and Maxwell of Garnsalloch, at number 302; the Lords found an act of curatory null, because three was declared to be a quorum, and three never accepted, and so their not acceptation (though the rest acted as curators) made the whole curatory to fall. But I suppose it will not be so in a tutory, where some, yea the major part, renouncing, the office accresces unto the rest, though the fewer: at least there will be more doubt in it. See Hadington, *December* 12, 1609, *Fairsyde* and *Adamsone.*

Advocates' MS. No. 313, *folio* 127.

1672. *January* 10, and *February* 1. LADY MACCARSTON and CAPTAIN GUTHRY, her Husband, *against* The LAIRD of MACCARSTON, her Son.

January 10.—A MOTHER having alimented her children, which she was not otherwise bound to do; *quæritur,* if she will get repetition thereof? It seems she will not, if she be yet a widow, *quia præsumitur inter ascendentes et descendentes præstitum ex pietate,* and so *cessat repetitio;* but the presumption fails *si præstita sint postquam super induxit vitricum vel si protestata fuerat. Vide omnino Nesennius,* 34 *D. de negotiis gestis.*

Advocates' MS. No. 296, *folio* 123.

February 1, 1672. In the action noted *supra* at number 296, betwixt Captain Guthry, who had married the Lady Maccarston, and the Laird of Maccarston, her son; the Lords found that a woman, having alimented her children come to